IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

WP(C).No. 35815 of 2003(L)

PETITIONER:

MANAGER, LAHAI ESTTE, RANNI,
PERINAD P.O., PATHANAMTHITTA.

BY ADV. .
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN

RESPONDENTS:

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1. THE GENERAL SECRETARY,
PATHANAMTHITTA DISTRICT THOTTAM
THOZHILALI UNION, (HMS) RANNI,
PERINAD P.O., PATHANAMTHITTA.

2. LABOUR COURT, KOLLAM.

BY ADV. SRI.KRB.KAIMAL (SR.)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20 /09 /2007 , THE COURT ON THE SAME DAYDELIVERED THE FOLLOWING:

APPENDIX

EXT.P1: TRUE COPY OF THE AWARD OF THE 2ND RESPONDENT DATED 8.4.03.

EXT.P2: TRUE COPY OF THE CLAIM STATEMENT FILED BY THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT DATED 14.11.95.

EXT.P3: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED NIL AUGUST, 97.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)NO.35815 OF 2003

DATED THIS THE 20th DAY OF SEPTEMBER, 2007

JUDGMENT

The management in I.D.No.28 of 1995 before the Labour Court, Kollam challenges Ext.P1 award passed in that I.D. "Reinstatement of the discharged worker (1137) Sri. Ibrahim" was the issue referred for adjudication. The contention of the management before the Labour Court was that the petitioner was continuously absent from 7.7.92 onwards and he had gone abroad for a job. Getting information about the same, on allegations of unauthorized absence as also that of in subordination, an enquiry was conducted. In the enquiry the petitioner was found guilty of unauthorized absence and was discharged from service. Since the imposition of punishment of discharge from service was pursuant to a domestic enquiry on allegations of misconduct, the Labour Court on the basis of evidence before it, found that in the enquiry the workman was not given due notice except affixing the notice in the line room allotted to the petitioner where he was admittedly not available

and therefore the enquiry was not proper and valid. Therefore the Labour Court set aside the enquiry and directed reinstatement of the workman in service. While doing so, taking into account the fact that admittedly the workman was absent from 7.7.92, the Labour Court limited the backwages to 40% from 7.1.95. The said findings are under challenge in this writ petition.

2. The main contention of the petitioner is that admittedly the workman was absent without leave for almost a year. When that fact is admitted the Labour Court could not have come to a different finding than that of the enquiry officer on facts. Further, the petitioner would submit that in Ext.P3 written statement filed before the Labour Court they had made a specific prayer for a direction to adduce fresh evidence to substantiate the charges against the workman, if the enquiry is found invalid which opportunity was not granted to the petitioner. On that ground alone the award is liable to be set aside and Labour Court is liable to be directed to re-adjudicate

the I.D. is the contention of the petitioner.

3. A reading of Ext.P1 award would make it abundantly clear that the Labour Court had not afforded an opportunity to the petitioner to adduce fresh evidence to prove the misconduct. Ext.P3 copy of written statement of the management before the Labour Court would show that such an opportunity was sought for by the management, also. That being so, the award is clearly liable to be set aside and the matter remanded to the Labour Court for fresh consideration after affording an opportunity of adducing fresh evidence to the management to substantiate the charges against the workman. However, I am not inclined to take that course of action in view of the following circumstances.

4. Admittedly, pursuant to Ext.P1 award the workman has been reinstated in service which the management accepts. Therefore, the only question remaining now is regarding payment of backwages. The alleged discharge was on 5.10.92. Fifteen years have gone by. Un-useful purpose will

be served in re-agitating the matter and it would be better for both sides to give quietus to the whole thing now. This Court had by an interim order dated 24.9.04 directed the petitioner to pay an amount of Rs.20,000/- to the workman subject to the contentions raised in the writ petition. I am of opinion that this matter should be closed in terms of that order, which amount should be taken as the backwages payable by the petitioner to the workman. In that view, the direction to reinstate the workman need not be interfered with.

Accordingly, I dispose of this writ petition upholding the direction to reinstate the workman but limiting the backwages to Rs.20,000/- payable as per the interim order dated 24.9.04. If the amount has not already been paid, the same shall be paid within one month from today.

S. SIRI JAGAN, JUDGE

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